IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 73 of 1996.

Reserved on: 26.10.2007.

Date of decision: 7.12.2007.

Amar Singh & Ors. …… Appellants

Versus

State of H.P. & Ors. …… Respondents

Coram :

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?[1] Yes.

For the appellants: Mr. Bimal Gupta, Advocate.

For the respondents: Mr. Ashutosh Burathoki, Additional Advocate General, for respondent No. 1.

Mr. K.D. Sood, Advocate with Mr. B.K. Sood, Advocate, for respondent No. 2.

Mr. Balwant Kukreja, Advocate, for respondent No. 4.

V.K. Ahuja, J.

This judgment shall dispose of an appeal filed under Section 100 C.P.C. by the appellants against the judgment and decree of the Court of learned District Judge, Shimla, dismissing the appeal filed by the appellants.

Briefly stated the facts of the case are that the appellants as plaintiffs filed a suit for recovery of Rupees One Lac damages as against the respondents hereinafter referred to as the defendants. The allegations made by the plaintiffs were that their mother Sushila Devi

[1]Whether reporters of Local Papers may be allowed to see the judgment? Yes.

aged about 60 years, fell ill in the early hours of 22.8.1981 and she was removed to Snowdon Hospital at 4.15 A.M. and she was given first aid by the Doctor there. However, the allegations were made that E.C.G. could not be done till 3.00 P.M. and for some period no Doctor attended the mother of the plaintiffs. E.C.G. was done subsequently and the patient was admitted in the hospital and in the evening their mother complained of chest pain and the emergency Doctor contacted the specialist who gave advise to give compose injection and thereafter after some time he reached the hospital and examined the patient but the patient ultimately died on the same evening. The suit was filed by the plaintiffs for recovery of the damages on the allegations that the doctor had been negligent in attending their mother who was not seen by the specialist at the earliest resulting in her death.

The allegations were denied by the defendants and the Medical Officers were also made party to the case against whom the allegations of negligence were made. The suit was tried by the learned trial Court who came to the conclusion that there was no negligence on the part of the Medical Officers and the plaintiffs were not entitled to any damages. Those findings were affirmed in appeal by the learned first Appellate Court and being aggrieved by the said judgment and decree, the appellants have come up in second appeal.

I have heard the learned counsel for the parties and have also gone through the record of the case.

The submissions made by the learned counsel for the appellants were that a careful perusal of the evidence of the plaintiffs and the Medical Officers examined in the case will prove that the services of the specialist were not made available at the earliest that the E.C.G. machine was not in working order and E.C.G. was done in

the evening and the specialist also examined their mother after sufficient lapse of time. Thus, it was submitted that the findings of both the Courts below to the contrary are liable to be reversed. On the other hand, the submissions made by the learned Additional Advocate General for respondent No. 1 as well as counsel for other respondents were that both the Courts below have carefully perused the evidence and have come to a definite conclusion that there was no negligence on the part of the Medical Officers attending the deceased. It was also submitted that one of the plaintiffs who had appeared in the witness box admits that the patient was attended upon by the Medical Officer on duty and there are no findings that E.C.G. machine was not in working order, E.C.G. was also done subsequently and no negligence has been proved of any of the Doctors. It was also submitted that no substantial question of law arises and there can be no reappraisal of evidence by this Court once the evidence has been appreciated by both the Courts below and as such, there is no merit in the appeal which deserves to be dismissed accordingly.

According to law laid down by the Apex Court the appeal has to be admitted on substantial question of law which arises in the appeal. This law has been clearly settled by the Apex Court in various judgments. But a perusal of the record of the case shows that when the appeal was admitted by the learned Single Judge on 24.4.1996, he only wrote the word 'admit' and it was not mentioned as to on what substantial question of law the appeal was admitted. This fact has not been pointed out by either of counsel of the parties during the course of arguments. But the appeal was to be admitted only when a substantial question of law is framed. Accordingly, I frame the same substantial questions of law as raised by the appellants at the time of filing of the

appeal which are formulated at Page No. 9 of the Court record at serial No. 1 and 2.

Coming to the substantial question of law thus formulated, the question framed was as to whether the respondents were careless or negligent in treating the deceased and the second question as to whether the lower appellate Court misconstrued and misinterpreted the material on record.

Coming to these substantial questions of law formulated at the time of filing of the appeal these only pertain to the findings of fact recorded by both the Courts below as to whether the respondents were careless or negligent in treating the deceased. This is a finding of fact recorded by both the Courts below after due appraisal of the evidence that the respondents were not careless or negligent in treating the deceased. Therefore, there is no question of reappraisal of the evidence by this Court sitting in appeal. The only legal point which arises for consideration is as to whether the appellate Court misinterpreted the material on record or the Courts below have not considered some material evidence oral or documentary in coming to their conclusion. No such oral evidence or documentary evidence has been referred to during the course of arguments which was not considered by both the Courts below in giving its findings which has resulted in miscarriage of justice. The only submissions were made on facts as to whether the Doctors gave the medical assistance at the earliest or not. A reference to the facts of the case has been made and particularly the testimony of the plaintiff Amar Singh who appeared as PW-1 will clearly show that the statement of the plaintiff was referred to in detail by both the Courts below. The statement of the plaintiff clearly establishes that the patient was admitted immediately in the hospital at

4.55 A.M. and she had been brought to the hospital at about 4.15 A.M. Statement further shows that she was immediately attended to by Dr. Vivek and Dr. Singh who prescribed medicines and referred her for E.C.G. It is also fact that on that date hospital was closed because of the gazetted holiday of 'Janam Ashtmi' and only in emergency the Doctor was available on duty and rest of the Doctors were available only on call. It is also on record that a message was flashed to Dr. Pal, Specialist and on his advise compose injection was given and Dr. Pal was a Cardiac Specialist and he had asked to be informed in case there was no improvement as observed by the learned trial Court. The said Doctor left for the hospital when he received message and a vehicle was sent to fetch him, he immediately came and attended the patient. The said evidence has been discussed by both the Courts below. From the evidence nothing could be found by both the Courts below that there was any negligence on the part of the Medical Officers on duty. The plaintiff was not a specialist to consider as to what treatment was to be given and in case there has been some delay or some ill advise in giving treatment that could only be proved if some medical expert had been examined by the plaintiffs to prove that the Doctors were negligent in treating the patient or did not provide medical assistance at the earliest. The broad general principle of medical negligence had been laid down by the Supreme Court in **Jacob Mathew** Vs. **State of Punjab and another**, **(2005) 6 Supreme Court Cases 1.** The observations made in Para 41 which are relevant can be reproduced below:

> "The practitioner must bring to his task a reasonable degree of skill and knowledge, and must exercise a reasonable degree of care. Neither the very highest nor a very low degree of care and competence is what the law requires."

The standard of care has to be judged in the light of knowledge available at the time of the incident. The Doctor is often called upon to adopt a procedure which involves higher level of risk, but which he honestly believes as providing greater chances of success for the patient, rather than a procedure involving lesser risk but higher chances of failure. Which course is more appropriate to follow, would depend upon the facts and circumstances of a given case but a doctor cannot be penalized if he adopts the former procedure, even if it results in a failure. The observations were made by their Lordships in dealing with the responsibility of medical practitioner or hospital in the Consumer Fora wherein complaints of medical negligence against doctors were being filed.

The learned counsel for the appellants had relied upon a judgment of Hon'ble Single Judge of this Court in **Jagdish Ram and Others** Vs. **State of H.P. & others**, **RFA No. 297 of 1997**, decided on 18.6.2007. It is clear from a perusal of this judgment that the case was of negligence of the Medical Officer who performed surgery of tubectomy upon the deceased. On the facts of the case, the learned Single Judge had come to a conclusion that the doctors on duty were negligent which findings are not attracted to the present facts which are quite different and as such, this decision does not help the appellants.

There is nothing on record to establish that no immediate medical assistance was given to the patient and rather the plaintiff had himself admitted that the Doctor on duty attended the patient at different times. This fact cannot be lost sight of that the services of the Specialist were not available immediately since it was a gazetted holiday and these were requisitioned and provided when the specialist

was informed about the condition of the patient by the Doctors on duty and no negligence has been proved on the Doctors on duty or on behalf of the specialist. Both the Courts below have come to a definite conclusion that there was no negligence on the part of the Medical Officers on duty and those findings do not call for an interference by this Court and as such, are liable to be dismissed.

From the above discussion, no case is made out calling for an interference in the findings recorded by the learned first appellate Court and the appeal filed by the appellants is accordingly dismissed. However, the parties are left to bear their own costs. Decree sheet be prepared accordingly.

(V.K. Ahuja),
Judge

December 7, 2007
(BSS)